

SENATE MOTION

MR. PRESIDENT:

I move that Engrossed House Bill 1243 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 36-9-23-25 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 25. (a) The municipal
- 5 legislative body shall, by ordinance, establish just and equitable fees
- 6 for the services rendered by the sewage works, and provide the dates
- 7 on which the fees are due.
- 8 (b) Just and equitable fees are the fees required to maintain the
- 9 sewage works in the sound physical and financial condition necessary
- 10 to render adequate and efficient service. The fees must be sufficient to:
- 11 (1) pay all expenses incidental to the operation of the works,
- 12 including legal expenses, maintenance costs, operating charges,
- 13 repairs, lease rentals, and interest charges on bonds or other
- 14 obligations;
- 15 (2) provide the sinking fund required by section 21 of this
- 16 chapter;
- 17 (3) provide adequate money to be used as working capital; and
- 18 (4) provide adequate money for improving and replacing the
- 19 works.
- 20 Fees established after notice and hearing under this chapter are
- 21 presumed to be just and equitable.
- 22 (c) The fees are payable by the owner, **occupant, or lessee** of each
- 23 lot, parcel of real property, or building that:
- 24 (1) is connected with the sewage works by or through any part of
- 25 the municipal sewer system; or
- 26 (2) uses or is served by the works.
- 27 Unless the municipal legislative body finds otherwise, the works are
- 28 considered to benefit every lot, parcel of real property, or building
- 29 connected or to be connected with the municipal sewer system as a
- 30 result of construction work under the contract, and the fees shall be
- 31 billed and collected accordingly.

(d) The municipal legislative body may use one (1) or more of the following factors to establish the fees:

- (1) A flat charge for each sewer connection.
- (2) The amount of water used on the property.
- (3) The number and size of water outlets on the property.
- (4) The amount, strength, or character of sewage discharged into the sewers.
- (5) The size of sewer connections.
- (6) Whether the property has been or will be required to pay separately for any part of the sewage works.
- (7) Whether the property, although vacant or unimproved, is benefited by a local or lateral sewer because of the availability of that sewer. However, the owner must have been notified, by recorded covenants and restrictions or deed restrictions in the chain of title of his property, that a fee or assessment for sewer availability may be charged, and the fee may reflect only the capital cost of the sewer and not the cost of operation and maintenance of the sewage works.
- (8) The cost of collecting, treating, and disposing of garbage in a sanitary manner, including equipment and wages.
- (9) The amount of money sufficient to compensate the municipality for the property taxes that would be paid on the sewage works if the sewage works were privately owned.
- (10) Any other factors the legislative body considers necessary.

Fees collected under subdivision (8) may be spent for that purpose only after compliance with all provisions of the ordinance authorizing the issuance of the revenue bonds for the sewage works. The board may transfer fees collected in lieu of taxes under subdivision (9) to the general fund of the municipality.

(e) The municipal legislative body may exercise reasonable discretion in adopting different schedules of fees, or making classifications in schedules of fees, based on variations in:

- (1) the costs, including capital expenditures, of furnishing services to various classes of users or to various locations; or
- (2) the number of users in various locations.

SECTION 2. IC 36-9-23-28, AS AMENDED BY P.L.2-2002, SECTION 123, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 28. (a) The legislative body of a municipality that operates sewage works under this chapter ~~may~~, **shall** by ordinance require the owners, lessees, or users of property served by the works to pay a deposit to ensure payment of sewer fees.

(b) The deposit required may not exceed the estimated average payment due from the property served by the sewage works for a three (3) month period. The deposit must be retained in a separate fund.

(c) The deposit, less any outstanding penalties and service fees, shall be refunded to the depositor after a notarized statement from the depositor that as of a certain date the property being served:

- (1) has been conveyed or transferred to another person; or
- (2) no longer uses or is connected with any part of the municipal sewage system.

A statement under subdivision (1) must include the name and address of the person to whom the property is conveyed or transferred.

(d) If a depositor fails to satisfy costs and fees within sixty (60) days after the termination of his use or ownership of the property served, he forfeits his deposit and all accrued interest. The forfeited amount shall be applied to the depositor's outstanding fees. Any excess that remains due after application of the forfeiture may be collected in the manner prescribed by section 31 or 32 of this chapter.

(e) A deposit may be used to satisfy all or part of any judgment awarded the municipality under section 31 of this chapter.

(f) A deposit made under this section that has remained unclaimed by the depositor for more than seven (7) years after the termination of the services for which the deposit was made becomes the property of the municipality. IC 32-34-1 (unclaimed property) does not apply to a deposit described in this subsection.

SECTION 3. IC 36-9-23-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 32. (a) **Except as provided in subsections (c) and (f),** fees assessed against real property under this chapter or under any statute repealed by IC 19-2-5-30 constitute a lien against the property assessed. The lien is superior to all other liens except tax liens. Except as provided in subsections (b) and (c), the lien attaches when notice of the lien is filed in the county recorder's office under section 33 of this chapter.

(b) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before the conveyance to the subsequent owner. If the property is conveyed before the lien can be filed, the municipality shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not less than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss.

(c) In the case of real property occupied by someone other than the owner, fees assessed against the real property under this chapter constitute a lien against the property assessed if:

- (1) the delinquent fees are set forth in a notice described in subsection (d); and**
- (2) the delinquent fees set forth in the notice exceed the amount of the deposit paid to the utility by the person occupying the real property.**

A lien established under this subsection may not exceed the difference between the amount of the deposit described in subdivision (2) and the amount of the delinquent fees set forth in

the notice described in subsection (d). A lien established under this section may not be recorded until after the utility has made all reasonable attempts to collect the delinquent fees from the person that paid the deposit described in subdivision (2).

~~(c)~~ (d) A lien attaches against real property occupied by someone other than the owner only if the utility notified the owner within twenty (20) days after the time the utility fees became sixty (60) days delinquent. However, the utility is required to give notice to the owner only if the owner has given the general office of the utility written notice of the address to which his notice is to be sent.

~~(d)~~ (e) The municipality shall release:

(1) liens filed with the county recorder after the recorded date of conveyance of the property; and

(2) delinquent fees incurred by the seller;

upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner, and that the purchaser has not been paid by the seller for the delinquent fees.

(f) If delinquent fees incurred by someone other than the owner of the real property are paid by the owner as a result of an enforcement action under this chapter, a subsequent delinquency incurred by that same person does not constitute a lien against the real property and is enforceable only against the person incurring the delinquency."

Page 3, after line 30, begin a new paragraph and insert:

"SECTION 5. [EFFECTIVE UPON PASSAGE] (a) Notwithstanding IC 36-9-23-33 or any other law, a lien recorded before May 1, 2003, to enforce the collection of unpaid fees and penalties assessed under IC 36-9-23 is void if:

(1) the delinquent fees and penalties accrued on a lot or parcel of real property that was not occupied by the owner or owners of the lot or parcel of real property;

(2) the delinquent fees and penalties were accrued by one (1) or more tenants of the owner or owners of the lot or parcel of real property;

(3) a portion of the unpaid fees and penalties enforced by the lien accrued at least twelve (12) months before the owner or owners of the lot or parcel of real property received notice of the delinquent fees; and

(4) a portion of the unpaid fees and penalties enforced by the lien accrued at least twelve (12) months before the date the lien was recorded.

(b) The officer charged with the collection of fees and penalties assessed under IC 36-9-23 shall release a recorded lien that is void under subsection (a). Service charges and recording fees may not be imposed upon the owner or owners of the lot or parcel of real property subject to a lien that is void under subsection (a).

- 1 **(c) This SECTION expires January 1, 2004.**
- 2 **SECTION 6. An emergency is declared for this act."**
- 3 Renumber all SECTIONS consecutively.
 (Reference is to EHB 1243 as printed April 4, 2003.)

Senator YOUNG R MICHAEL